

IN THE MATTER OF:)	AGREEMENT FOR RECOVERY
)	OF RESPONSE COSTS
DEL AMO SUPERFUND SITE,)	
WASTE PITS OPERABLE UNIT,)	
LOS ANGELES, CALIFORNIA)	U.S. EPA Region 9
)	CERCLA Docket No. 2006-16
SHELL OIL COMPANY and)	
UNITED STATES GENERAL SERVICES)	
ADMINISTRATION)	
SETTLING PARTIES)	PROCEEDING UNDER
)	SECTIONS 104,106,107,
)	122(h)(1) OF CERCLA,
)	42 U.S.C. § § 9604, 9606, 9607,
)	9622(h)(1)

I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Sections 104, 106, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §§ 9604, 9606, 9607, and 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and redelegated to the Superfund Branch Chief by Regional Order R9 1290.20.

2. This Agreement is made and entered into by EPA, Shell Oil Company ("Settling Party") and the United States General Services Administration ("Settling Federal Agency"). The Settling Party and the Settling Federal Agency consent to and will not contest EPA's authority to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Agreement concerns the Waste Pits Operable Unit of the Del Amo Superfund Site ("Site") located in Los Angeles, California. EPA alleges that the Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 and 106 of CERCLA, 42 U.S.C. §§ 9604 and 9606. These response actions include the issuance and oversight of the Unilateral Administrative Order for Remedial Design that EPA issued to Shell Oil Company and the United States General Services Administration on May 5, 1998. Shell Oil Company agreed to comply with the Unilateral Administrative Order and is currently performing response actions at the Site. Under a separate agreement and consistent with the terms of the Unilateral

Administrative Order, General Services Administration has been paying response costs to Shell Oil Company for response actions at the Site. EPA has incurred response costs in oversight of response actions at, or in connection with, the Waste Pits Operable Unit of the Del Amo Superfund Site.

5. On April 6, 1994, Shell Oil Company and the United States entered into a settlement agreement allocating response costs at the Site (the "1994 Settlement"). EPA was not a party to the 1994 Settlement, and the 1994 Settlement specifically excluded any claims or potential claims EPA might have against Shell Oil Company or other federal agencies of the United States. Nothing in this Agreement alters any of the provisions of the 1994 Settlement.

6. EPA alleges that Settling Party and Settling Federal Agency are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) and are jointly and severally liable for response costs incurred or to be incurred at or in connection with the Site.

7. EPA, the Settling Party and the Settling Federal Agency recognize that this Agreement has been negotiated in good faith, and that this Agreement is entered into without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

8. This Agreement shall be binding upon EPA, upon the Settling Party and its successors and assigns and upon the Settling Federal Agency and any successor departments or agencies. Any change in ownership or corporate or other legal status of the Settling Party, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Agreement" shall mean this Agreement and any attached appendices. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "Interest" shall mean the superfund interest rate calculated in the manner specified in CERCLA § 107(a); 42 U.S.C. § 9607(a) and published by EPA at http://www.epa.gov/ocfo/finstatement/superfund/int_rate.htm.

f. "Interim Response Costs" shall mean all costs, including but not limited to direct and indirect costs: a) that EPA has paid at or in connection with the RD UAO between October 31, 2005 and the Effective Date; or b) that EPA incurred at or in connection with the RD UAO prior to the Effective Date but paid after the Effective Date.

g. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.

h. "Parties" shall mean EPA, Settling Party and Settling Federal Agency.

i. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA has paid at or in connection with the UAO for Remedial Design at the Waste Pits Operable Unit of the Del Amo Superfund Site through October 31, 2005.

j. "Response Costs" shall mean all Past Response Costs and Interim Response Costs as defined in this Agreement at, or in connection with, the Waste Pits Operable Unit of the Del Amo Superfund Site.

k. "Section" shall mean a portion of this Agreement identified by a Roman numeral.

l. "Settling Party" shall mean Shell Oil Company.

m. "Settling Federal Agency" shall mean the United States General Services Administration and any successor department or agencies of the United States.

n. "Site" shall mean the Del Amo Superfund Site in Los Angeles County, California.

o. "RA UAO" shall mean the Unilateral Administrative Order, EPA Docket # 99-

08, that EPA issued to Shell Oil Company and the General Services Administration on May 3, 1999 for the performance of remedial action work at the Waste Pits Operable Unit of the Del Amo Superfund Site.

p. "RD UAO" shall mean the Unilateral Administrative Order, EPA Docket # 98-06, that EPA issued to Shell Oil Company and the General Services Administration on May 5, 1998 for the performance of the remedial design work at the Waste Pits Operable Unit of the Del Amo Superfund Site.

q. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

r. "Waste Pits OU" shall mean the Waste Pits Operable Unit of the Del Amo Superfund Site, encompassing approximately 5 acres, located at the corner of Vermont Avenue and Del Amo Boulevard in the City of Los Angeles, California, and generally shown on the map included in Appendix A.

V. PAYMENT OF RESPONSE COSTS

10. Payment for Past Response Costs

a. Payment for Past Response Costs by Settling Party

1. Within 45 business days after Settling Party receives notice from EPA that this Agreement has been signed by EPA and approved by the Attorney General or his designee, Settling Party shall deposit \$ 398,821.91 in an escrow account bearing interest on commercially reasonable terms, in a federally-chartered bank (the "Escrow Account") as payment for Past Response Costs. If the Agreement is not made effective after public comment, the monies placed in escrow, together with accrued interest thereon, shall be returned to Settling Party. If the Agreement is made effective after public comment, Settling Party shall, within 15 days thereof, cause the monies in the Escrow Account to be paid to EPA in accordance with Paragraph 10(a)(2) and 10(a)(3) below.

2. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Settling Party by EPA Region 9, and shall be accompanied by a statement identifying the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 0936, and the EPA docket number for this action.

3. At the time of payment, Settling Party shall also send notice that payment has been made to EPA in accordance with Section XV (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number 0936 and the EPA docket number for this action. At the time of payment, Settling Party shall send notice that such payment has been made to:

Dante Rodriguez
Remedial Project Manager
U.S. Environmental Protection Agency
75 Hawthorne Street (SFD 7-1)
San Francisco, CA 94105
(415) 972-3166

This notice will include copies of the transmittal letter and the check.

b. Payment for Past Response Costs by Settling Federal Agency

1. As soon as reasonably practicable after the Effective Date of this Agreement, the United States, on behalf of the General Services Administration, shall pay to the EPA the total of \$ 809,729.34.

2. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Settling Federal Agency by EPA Region 9, and shall be accompanied by a statement identifying the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 0936, and the EPA docket number for this action.

3. If the payment required by this Paragraph is not made as soon as reasonably practicable, the appropriate EPA Region 9 Branch Chief may raise any issues relating to payment to the appropriate United States Department of Justice Assistant Section Chief for the Environmental Defense Section. In any event, if the payment is not made within 120 days after the Effective Date of this Agreement, EPA and the United States Department of Justice have agreed to resolve this issue within 30 days in accordance with a letter agreement dated December 28, 1998.

4. The Parties recognize and acknowledge that the payment obligations of the General Services Administration under this Agreement can only be paid from appropriated funds legally available for such purpose. Nothing in the Agreement shall be interpreted or construed as a commitment or requirement that the General Services Administration obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

11. Payment for Interim Response Costs

a. Payment for Interim Response Costs by Settling Party

1. Settling Party shall pay EPA all Interim Response Costs not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300. EPA will send Settling Party a bill requiring payment that includes an EPA prepared cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Settling Party shall make payment within 45 days of receipt of the bill requiring payment, except as otherwise provided in Paragraph 12.

2. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Settling Party by EPA Region 9, and shall be accompanied by a statement identifying the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 0936, and the EPA docket number for this action. At the time of payment, Settling Party shall send notice that such payment has been made to:

Dante Rodriguez
Remedial Project Manager
U.S. Environmental Protection Agency
75 Hawthorne Street (SFD 7-1)
San Francisco, CA 94105
(415) 972-3166

This notice will include copies of the transmittal letter and the check.

b. Payment for Interim Response Costs by Settling Federal Agency

Settling Federal Agency's obligations for Interim Response Costs shall be governed by the 1994 Settlement Agreement between the United States and the Shell Oil Company. Nothing in this Agreement alters any of the terms or conditions of the 1994 Settlement Agreement.

12. Settling Party may contest payment of any Interim Response Costs billed under Paragraph 11, if they determine that EPA has made an accounting error, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP.

a. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the EPA Project Coordinator. Any such objection shall

specifically identify the contested Interim Response Costs and the basis for objection.

- b. In the event of an objection, Settling Party shall within the 30-day period pay all uncontested Interim Response Costs to EPA in the manner described in Paragraph 11. Simultaneously, Settling Party shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of California and remit to that escrow account funds equivalent to the amount of the contested Interim Response Costs.
- c. Settling Party shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested Interim Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account.
- d. Simultaneously with establishment of the escrow account, the Settling Party shall initiate the Dispute Resolution procedures in Section VI (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Settling Party shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 11. If Settling Party prevails concerning any aspect of the contested costs, Settling Party shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 11. Settling Party shall be disbursed any balance of the escrow account.
- e. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section VI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Party's obligation to reimburse EPA for its Interim Response Costs.

13. The total amounts to be paid pursuant to Paragraphs 10a, 10b, 11a and 11b shall be deposited in the Del Amo Superfund Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Del Amo Superfund Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

VI. DISPUTE RESOLUTION

14. Unless this Agreement expressly provides otherwise, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Agreement. The Parties shall attempt to resolve any disagreements concerning this

Agreement expeditiously and informally.

15. If Settling Party objects to any EPA action taken pursuant to this Order, including billings for Interim Response Costs, it shall notify EPA in writing of its objection(s) within 20 days of such action, unless the objection(s) has/have been resolved informally. EPA and Settling Party shall have 30 days from EPA's receipt of Settling Party's written objections to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

16. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Branch Chief level or higher will issue a written decision on the dispute to Settling Party. EPA's decision shall be incorporated into and become an enforceable part of this Agreement. Settling Party's obligations under this Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Settling Party shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs. Settling Party shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Settling Party agrees with the decision.

VII. FAILURE TO COMPLY WITH AGREEMENT

17. Interest on Late Payments. If the Settling Party fails to make any payment required by Paragraph 10 or Paragraph 11 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment. In the event that payment for Past Response Costs is not deposited into the escrow account within 45 business days of the Effective Date, or the payments for Interim Response Costs are not made within 45 days of the Settling Party's receipt of a bill, Settling Party shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date and shall continue to accrue until the date of payment or deposit into a interest bearing escrow account. The Interest on Interim Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the EPA by virtue of Settling Party's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Paragraph 18.

18. Stipulated Penalties. The Settling Party is responsible for the following stipulated penalties under this Agreement:

- a. If any amounts due to EPA under Paragraph 10 (Past Response Costs) and/or Paragraph 11 (Interim Costs) are not paid by the required date, Settling Party

shall be in violation of this Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 17, \$500.00 (five hundred dollars) per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 45 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number, and the EPA Docket Number for this action. Settling Party shall send the check (and any accompanying letter) to:

U.S. Environmental Protection Agency
Region 9 Superfund
P.O. Box 371099M
Pittsburgh, PA 15251

c. At the time of each payment, Settling Party shall also send notice that payment has been made to EPA in accordance with Section XV (Notices and Submissions). Such notice shall identify the EPA Region and Site Spill ID Number 0936 and the EPA Docket Number for this action.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due or the violation occurs and shall continue to accrue through the date of payment or correction. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

19. In addition to the Interest and stipulated penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply with the requirements of this Agreement, any Settling Party who fails or refuses to comply with the requirements of this Agreement shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

20. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Payment of stipulated penalties shall not excuse Settling Party from

payment as required by Section V or from performance of any other requirements of this Agreement.

VIII. COVENANT BY EPA

21. Except as specifically provided in Section VII and Section IX (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Party or Settling Federal Agency pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Response Costs as defined in this Agreement. This covenant shall take effect upon receipt by EPA of all amounts required by Section V (Payment of Response Costs) from Settling Party and Settling Federal Agency and any amounts due under Section VII (Failure to Comply with Agreement) from the Settling Party. This covenant not to sue is conditioned upon the satisfactory performance by the Settling Party and Settling Federal Agency of their obligations under this Agreement. This covenant not to sue extends only to the Settling Party and the Settling Federal Agency and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

22. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Party and Settling Federal Agency with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 21. Notwithstanding any other provision of this Agreement, EPA reserves all rights against Settling Party and Settling Federal Agency with respect to:

- a. liability for failure of Settling Party or Settling Federal Agency to meet a requirement of this Agreement;
- b. liability for costs incurred or to be incurred by the EPA that are not within the definition of Response Costs in this Agreement; including, but not limited to, response costs that have been or may be incurred relating to the RA UAO, costs at other operable units of the Del Amo Superfund Site, including the Soils and NAPL Operable Unit and the Montrose Del Amo Dual Site Groundwater Operable Unit, as well as any costs associated with the Montrose Superfund Site.
- c. liability for injunctive relief or administrative order enforcement to perform response actions under Sections 104 and 106 of CERCLA, 42 U.S.C. § 9604 and § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources,

and for the costs of any natural resource damage assessments.

23. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

X. COVENANT NOT TO SUE BY SETTLING PARTY and SETTLING FEDERAL AGENCY

24. Covenants Not to Sue

a. Covenant Not to Sue by Settling Party

Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Response Costs or this Agreement, including but not limited to:

1. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund or the Del Amo special account based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
2. any claims arising out of the Response Costs, including any claim under the United States Constitution, the Constitution of the State of California, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and
3. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Response Costs.

b. Covenant Not to Sue by Settling Federal Agency

Settling Federal Agency agrees not to assert any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund or the Del Amo special account based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law with respect to Response Costs or this Agreement.

25. Nothing in this Agreement shall be deemed to constitute approval or

preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. Part 300.700(d).

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

26. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. The Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

27. EPA, the Settling Party and the Settling Federal Agency agree that the actions undertaken by the Settling Party and the Settling Federal Agency in accordance with this Agreement do not constitute an admission of any liability by the Settling Party or the Settling Federal Agency. The Settling Party and the Settling Federal Agency do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II of this Agreement.

28. The Parties agree that Settling Party and the Settling Federal Agency are entitled, as of the Effective Date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Response Costs paid by the Parties as they are defined in this Agreement.

29. Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

30. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that

nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Section VIII.

XII. RETENTION OF RECORDS

31. Until 10 years after the Effective Date of this Agreement, Settling Party shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to Response Costs or to the liability of any person under CERCLA with respect to the Response Costs, regardless of any corporate retention policy to the contrary.

32. After the conclusion of the 10 year document retention period in the preceding paragraph, Settling Party shall notify EPA at least 90 days prior to the destruction of any such records and, upon request by EPA, Settling Party shall deliver any such records to EPA. Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. Settling Party shall retain all records that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor.

33. Settling Party hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding Response Costs or this Agreement since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site, and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

34. The United States acknowledges that the Settling Federal Party is subject to all applicable Federal record retention laws, regulations, and policies; and has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIII. NOTICES AND SUBMISSIONS

35. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA, the Settling Party, and the Settling Federal Agency.

As to EPA:

Dante Rodriguez
Remedial Project Manager
U.S. Environmental Protection Agency
75 Hawthorne Street (SFD 7-1)
San Francisco, CA 94105
(415) 972-3166

Michele Benson
Assistant Regional Counsel
U.S. Environmental Protection Agency
75 Hawthorne Street (SFD 7-1)
San Francisco, CA 94105
(415) 972-3918

As to Settling Party:

George E. Landreth
Remediation Manager
Shell Oil Company LP
One Shell Plaza
910 Louisiana
Houston, Texas 77002-4916
(713) 241-5400

Randall J. Heldt
Sr. Counsel
Shell Oil Company
P.O. Box 2463
Houston, Texas 77252-2463
(713) 241-3633

As to Settling Federal Agency

Attn: DJ # 90-11-3-21
Environmental Defense Section
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-2986

XIV. INTEGRATION/APPENDICES

36. This Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement. The following appendix is attached to and incorporated into this Agreement: "Appendix A" is the Site Map.

XV. PUBLIC COMMENT

37. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

XVI. ATTORNEY GENERAL APPROVAL

38. The Attorney General or his designee has approved the settlement embodied in this Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

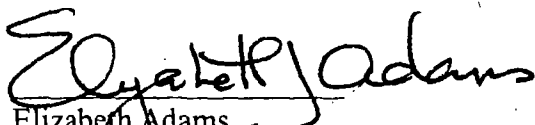
VII. EFFECTIVE DATE

39. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 37 has closed and that comments received, if any, do not require modification of, or EPA withdrawal from this Agreement ("Effective Date").

IT IS SO AGREED:

U.S. Environmental Protection Agency

By:

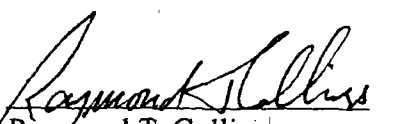

Elizabeth Adams
Chief, Site Cleanup Branch
U.S. EPA, Region 9

8/16/06
Date

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of CERCLA Docket No. 2006-16, relating to the Del Amo Superfund Site, Waste Pits Operable Unit:

FOR SETTLING PARTY: SHELL OIL COMPANY

By:


Raymond T. Collins
Global Divestments Manager
Shell Chemical L.P.
P. O. Box 2463
Houston, TX 77252-2463

6/15/06
Date

[Name]

[Date]

Title: _____

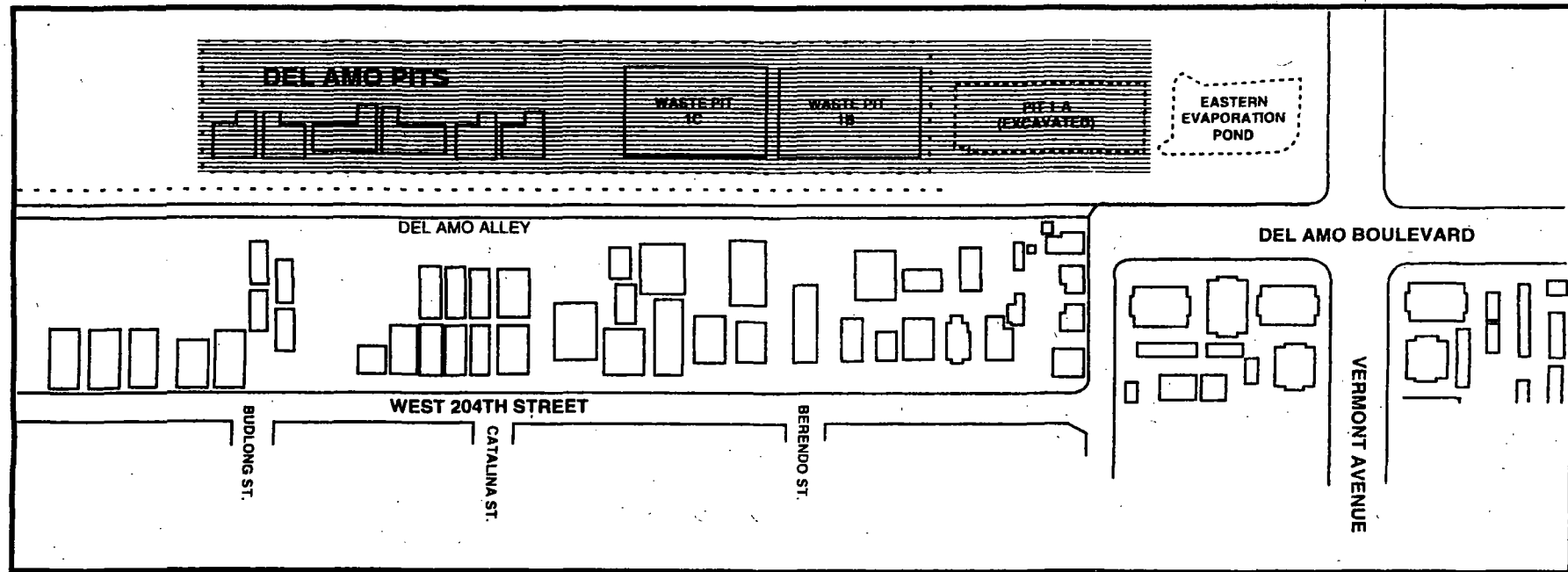
FOR SETTLING FEDERAL AGENCY: UNITED STATES GENERAL SERVICES
ADMINISTRATION

By: Thomas Band
[Name]

7/26/06
[Date]

Title: Senior Asst. Gen. Counsel

FIGURE 3
EXTENT OF CAP (APPROXIMATE)



 **Extent of Cap**

B. How Can I Access Electronic Copies of This Document and Other Related Information?

In addition to using www.regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the ORD Docket, EPA/DC, Public Reading Room, Infoterra Room (Room Number 3334), 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the ORD Docket is (202) 566-1752. EPA's position paper(s), charge/questions to the HSRB, and the meeting agenda are now available. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the www.regulations.gov Web site and the HSRB Internet Home Page at <http://www.epa.gov/osa/hsrb/>. For questions on document availability or if you do not have access to the Internet, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide copies of any technical information and/or data you used that support your views.
- Provide specific examples to illustrate your concerns.
- To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. How May I Participate in This Meeting?

You may participate in this meeting by following the instructions in this section. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA-HQ-ORD-2006-0798 in the subject line on the first page of your request.

a. **Oral comments.** Requests to present oral comments will be accepted up to October 10, 2006. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via e-mail) to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern time, October 10, 2006, in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB DFO to review the agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, LCD projector, chalkboard). Oral comments before the HSRB are limited to 5 minutes per individual or organization. Please note that this limit applies to the cumulative time used by all individuals appearing either as part of, or on behalf of an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand these time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is available, there may be flexibility in time for public comments. Each speaker should bring 25 copies of his or her comments and presentation slides for distribution to the HSRB at the meeting.

b. **Written comments.** Although you may submit written comments at any time, for the HSRB to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least 5 business days prior to the beginning of the meeting. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the Board members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written

comments, the Agency strongly encourages you to submit such comments no later than noon, eastern time, October 10, 2006. You should submit your comments using the instructions in Unit I.C. of this notice. In addition, the Agency also requests that person(s) submitting comments directly to the docket also provide a copy of their comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the length of written comments for consideration by the HSRB.

E. Background

EPA will be presenting for HSRB review the results of a completed human toxicity study, evaluating the allergic contact dermatitis response in individuals with known sensitivity to hexavalent chromium to repeated exposure to a wood treatment solution containing hexavalent chromium. In addition, the Board will be asked to review two revised research protocols to evaluate the efficacy of new formulations of the repellent, IR3535, against ticks and mosquitoes and to advise on a draft guidance document explaining to the public how to submit proposed and completed human research to EPA for review by the HSRB. Finally, at the Board's request, EPA will present the statutory and regulatory procedures that EPA and its federal advisory committees are required to follow when handling materials claimed to be confidential business information (CBI) under FIFRA or other laws. The HSRB intends to discuss how it would like to operate in the event that EPA requests the Board to review materials containing CBI.

Dated: September 22, 2006.

George Gray,

Science Advisor.

[FR Doc. E6-15832 Filed 9-26-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8223-6]

Proposed CERCLA Administrative Agreement for Recovery of Response Costs; Denova Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as

amended by the Superfund Amendments and Reauthorization Act ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed Agreement for Recovery of Response Costs ("Agreement," Region 9 Docket No. 9-2006-0010) pursuant to section 122(h) of CERCLA concerning the Denova Superfund Site, (the "Site"), located in Rialto, California. The settling parties to the Agreement are Environmental Enterprises Inc., and Daniel J. McCabe.

The Agreement compensates EPA for past response costs related to the removal action taken at the Site. The Agreement provides for a total recovery of \$75,000.00. The Agreement also provides the settling parties with contribution protection under CERCLA 113(f)(2) for response cost paid under the Agreement.

For thirty (30) days following the date of publication of this Notice, the Agency will receive written comments relating to the proposed Agreement. The Agency's response to any comments will be available for public inspection at the Agency's Region IX offices, located at 75 Hawthorne Street, San Francisco, California 94105.

DATES: Comments must be submitted on or before October 27, 2006.

ADDRESSES: The proposed Agreement may be obtained from Judith Winchell, Docket Clerk, telephone (415) 972-3124. Comments regarding the proposed Agreement should be addressed to Judith Winchell (SFD-7) at United States EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105, and should reference the Denova Superfund Site, Rialto, California, and USEPA Docket No. 9-2006-0010.

FOR FURTHER INFORMATION CONTACT: Michele Benson, Office of Regional Counsel, telephone (415) 972-3918, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105.

Dated: August 10, 2006.

Keith A. Takata,

Director, Superfund Division.

[FR Doc. E6-15904 Filed 9-26-06; 8:45 am]

BILLING CODE 6560-50-P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Draft National Assessment of Efforts To Predict and Respond to Harmful Algal Blooms in U.S. Waters

ACTION: Notice of draft report release and request for public comment.

SUMMARY: The Office of Science and Technology Policy (OSTP) publishes this notice to announce the availability

of the Draft *National Assessment of Efforts to Predict and Respond to Harmful Algal Blooms in U.S. Waters* which was mandated by Congress in the *Harmful Algal Bloom and Hypoxia Amendments Act of 2004* (Pub. L. 108-456). This report reviews and evaluates short term harmful algal bloom (HAB) prediction techniques, and identifies current prevention, control and mitigation (PCM) programs and research for freshwater, estuarine and marine HABs operating at the national, State, local and tribal level.

DATES: Comments on this draft document must be submitted by 11/20/2006.

ADDRESSES: The Draft *National Assessment of Efforts to Predict and Respond to Harmful Algal Blooms in U.S. Waters* will be available at the following location (http://ocean.ceq.gov/about/sup_jsost_iwgs.html). The public is encouraged to submit comments on the draft report electronically to Prediction.Response.Comments@noaa.gov. For those who do not have access to a computer, comments on the document may be submitted in writing to: Quay Dortch, NOS/NCCOS/CSCOR/COP, N/SCI2, NOAA, 1305 East West Highway, Building IV Rm 8220, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Quay Dortch by phone 301-713-3338 x157.

SUPPLEMENTARY INFORMATION: OSTP is publishing this draft report as mandated by the *Harmful Algal Blooms and Hypoxia Amendments Act of 2004* (Pub. L. 108-456) to request public comments. The report is organized into five sections plus five appendices: (1) Executive Summary, (2) Legislative Background and Purpose of the Report, (3) Assessment of the Harmful Algal Bloom (HAB) Problem in U.S. Waters, (4) Prediction and Response Programs in the U.S. and (5) Opportunities for Advancement in Prediction and Response Efforts. Appendices include: Appendix I: Prediction and Response Programs in the U.S., Appendix II: Other National Programs, Appendix III: State, local, and tribal Prediction and Response Efforts, Appendix IV: International Programs related to HAB prediction and response, and Appendix V: Federal Register notice.

Report Summary

The *Harmful Algal Bloom and Hypoxia Amendments Act of 2004* (Pub. L. 108-456) (HABHRCA 2004) reauthorized the original *Harmful Algal Bloom and Hypoxia Research and Control Act* (Pub. L. 105-383) of 1998

and stipulated generation of five reports to assess and recommend research programs on harmful algal blooms (HABs) and hypoxia in U.S. waters. Section 103 of HABHRCA 2004 requires a *Prediction and Response Report*. This report will review and evaluate HAB prediction and response techniques and identify current prevention, control and mitigation (PCM) programs for freshwater, estuarine and marine HABs. Prediction and response are narrowly defined for the purpose of this report in order to avoid overlap with a subsequent report in this series, *Scientific Assessment of Marine Harmful Algal Blooms*.

The Interagency Working Group on Harmful Algal Blooms, Hypoxia, and Human Health (IWG-4H) of the Joint Subcommittee on Ocean Science and Technology (JSOST), which was tasked with implementing HABHRCA 2004, streamlined the reporting process by linking the P&R report (Section 103) with the *National Scientific Research, Development, Demonstration, and Technology Transfer Plan on Reducing Impacts from Harmful Algal Blooms* (Section 104 RDDTT Plan). The P&R report will (1) detail Federal, State, and tribal prediction and response related research and impact assessments, (2) identify opportunities for improvement of prediction and response efforts and associated infrastructure, and (3) propose a process to evaluate current prediction and response programs in order to develop a coordinated research priorities plan (RDDTT Plan). The final step (3) will lead to the development of the second report (RDDTT Plan) stipulated by the HABHRCA legislation (Section 104). The P&R report and the RDDTT Plan together comprise a comprehensive evaluation and multi-stakeholder plan to improve the national and local response to HABs in U.S. waters.

It is widely believed that the frequency and geographic distribution of HABs have been increasing worldwide. All U.S. coastal States have experienced HABs over the last decade. HAB frequency is also thought to be increasing in freshwater systems including ponds and lakes. In response, Federal, State, local, and tribal governments in collaboration with academic institutions have developed a variety of programs over the past 10 years both to understand HAB ecology and to minimize, prevent, or control HABs and HAB impacts in U.S. waters.

As a result of the efforts initiated in 1993, there are now 16 Federal extramural funding programs which either specifically or generally target HAB prediction and response and 20



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105**

Mail Stop: ORC 3
Telephone: (415) 972-3918
Facsimile: (415) 947-3570

October 13, 2006

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Shell Oil Company
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Attn: DJ # 90-11-3-21
Environmental Defense Section
U.S. Department of Justice
P.O. Box 23986
Washington, DC 20026-2986

Re: Del Amo Superfund Site, Waste Pits Operable Unit Settlement for Remedial Design Response Costs, U.S. EPA Region 9 CERCLA Docket No. 2006-16

Dear Sirs:

Please find enclosed a copy of the final Administrative Order on Consent, U.S. EPA Region 9 CERCLA Docket No. 2006-00016 (the "Agreement"), between the United States Environmental Protection Agency, Shell Oil Company and the United States General Services Administration for Remedial Design Response Costs at the Waste Pits Operable Unit of the Del Amo Superfund Site

in Los Angeles, California. The public comment period for the Agreement has concluded, and EPA received no comments. Accordingly, there is no information sufficient for EPA to withdraw or modify the Agreement. In accordance with paragraph 39 of the Agreement, the "Effective Date" will be today, October 13, 2006. If you have any questions about the Agreement, do not hesitate to call me at the number above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michele Benson".

Michele Benson
Attorney Advisor

Enclosure

cc: Steve O'Rourke, DOJ
Dante Rodriguez, EPA Reg. IX
Lisa Ouyang, EPA Reg. IX